

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
RECEIVED

AUG 19 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Annual Assessment of the Status of
Competition in the Market for the
Delivery of Video Programming

)
)
)
)
)
)

CS Docket No. 96-133

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF VIACOM INC.

Peter D. Ross
Wayne D. Johnsen

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

August 19, 1996

No. of Copies rec'd
List A B C D E

074

TABLE OF CONTENTS

	<u>Page</u>
I. Recent Developments Underscore Viacom's Continued Focus on Its Role As A Provider of Program Content	1
II. The Commission Should Once Again Reject The Call for Unwarranted Expansion of the Program Access Rules	3
III. Conclusion	8

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

AUG 19 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Annual Assessment of the Status of)	CS Docket No. 96-133
Competition in the Market for the)	
Delivery of Video Programming)	

REPLY COMMENTS OF VIACOM INC.

Viacom Inc. ("Viacom"), by its attorneys, hereby submits its reply comments in the above-referenced proceeding. Viacom, first, responds to the Commission's solicitation of information regarding new developments of note in the video marketplace and, second, urges the Commission to reject, as it has in the past, the call for unwarranted expansion of the program access rules.

I. Recent Developments Underscore Viacom's Continued Focus on Its Role As A Provider of Program Content

Viacom has taken a number of noteworthy steps over the past year that reflect its continued focus on serving as a provider of program content. As described below, Viacom has completed its exit from the business of cable system ownership, launched one new program service and two channel extensions, and has supported the growth of the emerging UPN broadcast network (in which Viacom has an option to obtain an equity interest).

On July 31, 1996, Viacom completed the long-anticipated divestiture of its cable systems. Viacom spun off its cable system operations, controlling shares of which were acquired by Tele-Communications Inc.¹

While moving out of the cable system business, Viacom has sought to build on the complement of diverse and growing program services it provides to a variety of multichannel distributors in the video marketplace. Viacom owns and markets program services which range from the long-established to the still emerging and, as described below, to spin-offs and the newly launched.² Viacom's strategies for distribution of its program services have never been driven by its cable system interests, and now as an unaffiliated programmer Viacom certainly will continue to seek the strongest distribution opportunities possible for each of its services. Notwithstanding the FCC's carriage agreement and channel occupancy rules, however, it has remained a tremendous challenge to secure and maintain carriage on capacity-strained cable systems.

In February, 1996, *Sundance Channel*, a premium program service that features independent, art house and experimental films, as well as documentaries, short

¹ Thus, in updating its annual report, the Commission will want to note in its tracking of vertical integration in program services that the Viacom program services are now unaffiliated.

² Viacom, through affiliates, owns and operates: (i) the premium program services Showtime, The Movie Channel, and FLIX; and (ii) the advertiser-supported program services Nickelodeon (comprising the Nickelodeon and Nick at Nite/TV Land programming blocks), MTV: Music Television/M2: Music Television, and VH1/Music First. Viacom also, through affiliates, holds partnership interests in USA Networks, All News Channel, and (in a partnership with a Time Warner affiliate) Comedy Central.

subjects, and other short-form programming, was launched. Sundance Channel is owned by affiliates of Viacom, Robert Redford's Sundance group, and PolyGram.

On April 29, 1996, MTV Networks ("MTVN"), a division of Viacom International Inc., commenced distribution of *Nick at Nite's TV Land* ("TV Land"). A spin-off of *Nick at Nite*, *TV Land* is a 24-hour per day channel consisting of television shows, promotions, and specials in a range of genres, including comedy, drama, variety, westerns, talk, and other formats from the 1950s and 1960s.

On August 1, 1996, MTVN commenced distribution of *M2: Music Television* ("M2"). A spin-off of *MTV: Music Television*, *M2* targets a unique segment of 12-34 year olds, with a "freeform" music format consisting of a broad group of artists and genres of music.

As noted above, Viacom also has an option to obtain an equity interest in United Paramount Network ("UPN"), an emerging broadcast network. UPN does not principally rely on cable carriage to distribute its programming, except to the extent that its affiliated broadcast stations may do so. However, in certain areas of the country lacking a clear signal from a UPN affiliated broadcaster, UPN may attempt to enter into agreements with local cable systems for direct carriage of the network's programming.

II. The Commission Should Once Again Reject The Call for Unwarranted Expansion of the Program Access Rules

Viacom also responds to several commenters that once more urge the Commission to recommend the expansion of the program access rules to non-vertically

integrated programmers.³ Just as the Commission has always found in the past, these commenters again have failed to present either the rationale or the evidence that would justify such an extreme step. Accordingly, the Commission should again reject these unwarranted annual calls to expand the scope of the program access rules beyond its policy base.⁴

The Commission has consistently considered this issue and found no reason to recommend extension of the program access rules to non-vertically integrated programmers. Again just last year, in its 1995 report to Congress on the "status of competition in the market for the delivery of video programming," the Commission found that no legitimate reason had been proffered that would require such action.⁵

As Viacom has consistently demonstrated,⁶ extension of the rules to non-vertically integrated programmers would not promote competition, but rather would only impede the further development of new and established program services by, among other things, restricting the flow of investment in these services. Viacom

³ See, e.g., Comments of The Wireless Cable Association International, Inc. at 20-23; Comments of Ameritech New Media, Inc. at 9-10; Comments of SBC Communications Inc. at 6.

⁴ Several commenters also urge the Commission to extend the scope of the rules to cover program services that are delivered by means other than satellite. For reasons similar to those discussed above, the Commission likewise should again reject these proposals for expansion of the program access rules.

⁵ See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Second Annual Report, CS Docket No. 95-61, FCC 95-491 (rel. Dec. 11, 1995) ("Second Competition Report").

⁶ See, e.g., Reply Comments of Viacom Inc., CS Docket No. 95-61 (filed July 28, 1995).

reiterates here that there is no rational policy basis for extending the program access rules in this manner.

As Viacom has noted in prior pleadings, the program access rules were originally designed to constrain the perceived market power of cable operators -- not to regulate programming per se, but to ensure that cable operators did not exploit their ownership of program services to impede the development of competing multichannel video programming distributors ("MVPDs").⁷ Moreover, in extending program access obligations to common carriers that provide video programming by any means,⁸ Congress only months ago confirmed its clear intent that application of the program access rules be strictly limited to those program services vertically integrated with a cable or, now, telco video distributor. Program services which are not owned by any such distributor, in contrast, are inherently supportive of robust competition in the video distribution business.⁹ Extension of the program access rules to non-vertically

⁷ See, e.g., Reply Comments of Viacom Inc., CS Docket No. 95-61 (filed July 28, 1995).

⁸ See 47 U.S.C. § 548(j).

⁹ Viacom also notes the comments of General Instruments Corporation regarding the ability of technological advances to enhance competition in the marketplace for the delivery of video services. Comments of General Instruments Corporation at 2. Viacom believes that promoting interoperability consistent with protecting against signal piracy is of paramount importance in ensuring that consumers are able to enjoy the full benefits of increasing competition in the video marketplace.

integrated programmers would serve only to discourage investment in both new and established program services.¹⁰

Rather than relying on arm's length negotiations, commenters arguing for extension of the program access rules seek to obtain a regulatory sword to be used against non-vertically integrated programmers. In effect, these parties urge the Commission to find that the proper way to deal with the market power they believe large cable operators exert over programmers is to extend the benefit of that market power to all distributors. The Commission should reject these overt attempts to "punish the victim," rather than the alleged perpetrators.

In sum, the record fails to demonstrate that an extension of the program access rules to non-vertically integrated programmers would enhance competition. Extending the program access rules as requested would harm the robust and competitive

¹⁰ Program access expansionists point accusingly to press reports that a few new, non-vertically integrated program services might be offering exclusive deals to cable operators in order to obtain carriage. Yet Congress has recognized, and the program access rules themselves reflect, that exclusive distribution arrangements can be a legitimate, pro-competitive business practice when entered into through arm's length negotiations. Such arrangements might be critical for a given unaffiliated programmer seeking to obtain the subscriber base needed for the viable launch of a new program service or to ensure the viability of an existing program service. Moreover, there is no indication that the inability of any distributor to obtain access to such program services will harm the distributor's ability to compete with entrenched cable operators. Indeed, by negotiating such exclusive arrangements of their own, alternative distributors could differentiate their offerings from cable and provide consumers with additional choices in programming.

programming marketplace.¹¹ Accordingly, any calls to extend the scope of the program access rules should be rejected.

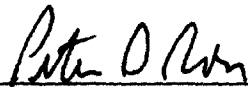
¹¹ The National Rural Telecommunications Cooperative ("NRTC") once again raises its tired call to impose damages on those violating the program access rules and to preclude vertically integrated programmers from entering into exclusive distribution arrangements with non-cable distributors. Comments of NRTC at 3-9. Those arguments need not be rebutted again here (but see, e.g., Opposition to Petition for Reconsideration, MM Docket No. 92-265, filed by Viacom International Inc., July 14, 1995; and Reply Comments of Viacom Inc., CS Docket No. 95-61, filed July 28, 1995), as the Commission has consistently rejected NRTC's arguments in the past and NRTC has provided the agency with no new basis to depart from its earlier conclusions on these issues. See, e.g., Second Competition Report, supra, at ¶168.

III. Conclusion

Commenters seeking to apply the program access rules to non-vertically integrated programmers have provided the Commission with no compelling or even credible theory or evidence warranting such a radical expansion. Extension of the rules in this manner would only serve to impede the development of new and established program services. Accordingly, the Commission should again reject the call for program access expansion as it submits to Congress its update on a video programming marketplace already posing substantial challenges for unaffiliated programmers.

Respectfully submitted,

VIACOM INC.

By: 
Peter D. Ross
Wayne D. Johnsen

of

Wiley, Rein & Fielding
1776 K Street, NW
Washington, D.C. 20554
(202) 429-7000

August 19, 1996